

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

LEROY KELLEY, #39302

PETITIONER

VERSUS

CIVIL ACTION NO. 1:09CV304HSO-JMR

RONALD KING

RESPONDENT

ORDER ADOPTING REPORT AND RECOMMENDATION

This cause comes before the Court on the Report and Recommendation [7] of Chief United States Magistrate Judge John M. Roper, recommending that Respondent's Motion [6] to Dismiss pursuant to 28 U.S.C. § 2244(d), be granted, and further recommending dismissal of Petitioner Leroy Kelley's Petition for Writ of Habeas Corpus. *See Report and Recommendation*, at p. 5.

The record reveals that Petitioner has neither filed a Response to Respondent's Motion, nor has he filed objections to the Magistrate's Report and Recommendation. Based on the record before this Court, the undersigned finds that the Magistrate Judge properly recommended that Respondent's Motion to Dismiss be granted pursuant to 28 U.S.C. § 2244(d).¹ After referral of hearing by this Court, no objections having been

¹The Court notes that in addition to what is stated in the Magistrate Judge's Report and Recommendation, the Petition for Writ of Habeas Corpus reflects that Petitioner filed a Motion for Post Conviction Relief in March 2007. *See* Petition at p. 3. Petitioner does not attach the Motion but instead claims that it was filed in the Circuit Court of Jackson County, Mississippi, in cause number 2008-00,119(2). *See id.* Petitioner attached an Order with a 2007 cause number to his Petition in this Court. *See* Order, attached as "Annex No. 1" to Petition. He asserts that the Order addresses his Motion for Post-Conviction Relief in cause number 2008-00,119(2). *See* Petition at p. 6. However, the record reflects that the Motion for Post-Conviction Relief in cause number 2008-00,119, was in fact signed by Petitioner on April 29, 2008, and stamped filed in the Jackson County Circuit Clerk's office on May 6, 2008. *See* Mot. for Post-

filed, and the Court, having fully reviewed the same as well as the record in this matter, and being fully advised in the premises, finds that the Magistrate's Report and Recommendation should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [7] of Chief United States Magistrate Judge John M. Roper, be, and the same hereby is, adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Respondent's Motion to Dismiss Pursuant to § 2244(d), should be and hereby is **GRANTED**. A separate judgment will be entered in accordance with this Order as required by Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 19th day of January, 2010.

s/ Halil Suleyman Ozerdem

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE

Conviction Collateral Relief, attached as Ex. "C" to Mot. to Dismiss. Petitioner indicated in this Motion that there had been no previous proceedings in state or federal court to secure relief from his conviction or sentence. *See id.*

In sum, the record reflects that the Motion for Post-Conviction Collateral Relief in case number 2008-00,119(2), attached as Exhibit "C" to Respondent's Motion, was Petitioner's only state court motion for post-conviction relief. Petitioner has not submitted any other motions for the Court's review and has otherwise not objected to the Magistrate Judge's findings. As stated in the Magistrate Judge's Report and Recommendation, Petitioner's Motion for Post-Conviction Collateral Relief was filed some 113 days after the January 14, 2008, deadline for filing his *habeas* petition, and the tolling provision of 28 U.S.C. § 2244(d)(2) was therefore not triggered.